

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
)	
IVAN RALPH SHULL and)	Bankruptcy Case No. 97-60915
KAREN SUE SHULL,)	
)	
Debtors.)	
_____)	
)	
IVAN RALPH SHULL,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Case No. 00-6059
)	
DEPARTMENT OF NATURAL)	
RESOURCES OF THE STATE OF)	
ILLINOIS,)	
)	
Defendant.)	

OPINION

This matter having come before the Court on cross motions for summary judgment; the Court, having heard arguments of counsel and having reviewed the written memoranda of the parties, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Court finds that the material facts in this matter are not in dispute, and are, in pertinent part, as follows:

1. The Debtor/Plaintiff, Ivan Ralph Shull, filed for relief under Chapter 7 of the Bankruptcy Code on October 21, 1997. In his petition under Chapter 7, the Debtor scheduled as a creditor the Illinois Department of Natural Resources, Department of Mines and Minerals, located at 524 South Second Street, Springfield, Illinois.

2. On January 15, 1998, Debtor received a discharge under Chapter 7 of the Bankruptcy Code, and the case was closed as a "no asset" Chapter 7 case. Debtor's Chapter 7 case was subsequently reopened on October 24, 2000, to allow the filing of the instant adversary proceeding.

3. Although the Debtor scheduled the Illinois Department of Natural Resources, Department of Mines and Minerals as a creditor, on Schedule F of his bankruptcy schedules, the Debtor inadvertently omitted listing his debt to the Illinois Department of Natural Resources, Department of Mines and Minerals, for oil well fees owed in the amount of \$1,500 that were due on September 1, 1997, for the fiscal year 1998. These oil well fees covered an oil well concerned in a lawsuit now pending against the Debtor/Plaintiff in Clark County, Illinois.

4. The oil well fees in question were assessed against the Debtor/Plaintiff on July 1, 1997, and notice of those fees and request for payment was mailed to the Debtor/Plaintiff on July 10, 1997, by the Defendant. Payment on said fees was due on or before September 1, 1997.

5. As a result of the Debtor/Plaintiff's failure to pay the 1998 fiscal year fees, a series of administrative actions occurred resulting in the oil well in question being plugged on or about September 11, 1998. The affidavit of Karen Jacobs attached to the Motion for Summary Judgment filed by the Defendant on February 12, 2001, indicates that a Notice of Department of Natural Resources hearing was issued on February 19, 1998, concerning the issue of whether the Debtor should have been deemed to

have abandoned the oil wells in question. A judgment was entered by the Department of Natural Resources on March 10, 1998, with an administrative decision being issued on March 11, 1998. On June 15, 1998, an invoice for emergency services at the well was issued, and on September 11, 1998, the plugging work and clean up of the oil well in question was done. A final invoice for the work done was issued on September 18, 1998, and a demand for payment from the Debtor/Plaintiff was issued on April 7, 1999. The affidavit also indicates that the claim of the Department of Natural Resources involved herein is for costs of plugging and clean up at the well, all occurring after January 15, 1998, and that the claim is not for fiscal year 1998 fees.

6. The Debtor/Plaintiff did not respond to the demand for payment issued by the Defendant on April 7, 1999. As a result, the Department of Natural Resources filed a Complaint in the Circuit Court of the Fifth Judicial Circuit, Clark County, Illinois, under Case No. 2000-SC-128, on June 7, 2000, seeking a judgment in its favor and against the Debtor/Plaintiff in the sum of \$4,097. It is this debt that is the subject of the instant adversary proceeding.

Conclusions of Law

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy procedure 7056. Rule 56(c) reads in part:

(T)he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed.R.Civ.P. 56(c); See Donald v. Polk County, 836 F.2d 376, 378-379 (7th Cir. 1988).

The United States Supreme Court has issued a series of cases which encourage the use of summary judgment as a means of disposing of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). "The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute." Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmens Federal Savings & Loan Ass'n, 806 F.2d 146, 149 (7th Cir. 1986). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, 477 U.S. at 256, 106 S.Ct. at 2514. There is no genuine issue for trial if the record, taken as a whole, does not lead a rational trier of fact to find for the non-moving party. Matsushita, 475 U.S. at 587, 106 S.Ct. at 1356. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-250, 106 S.Ct. at 2511.

In the instant case, there are clearly no disputed material facts. As such, summary judgment is appropriate, pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure.

The sole issue before the Court is whether the costs of clean up and well plugging, in the total amount of \$4,097, are dischargeable in the Debtor/Plaintiff's Chapter 7 bankruptcy as constituting a claim that, although unmaturing and unliquidated, existed at the time of the Debtor/Plaintiff's bankruptcy filing; or whether the clean up and plugging costs arose solely postpetition such that they would not be discharged.

The Court has reviewed the cases cited by Defendant, Department of Natural Resources, and finds that none of the cases cited are on point. In fact, the Court finds that all of the cases cited by the Department of Natural Resources are clearly distinguishable from the case at hand, and, in conducting its

own research, the Court has been unable to find a case that directly deals with the fact situation at bar.

Having found no case law concerning this matter, the Court turns to the definition of a claim under the Bankruptcy Code found at 11 U.S.C. § 101(a)(5), which states:

11 USCS 101 - Definitions

(5) "claim" means -

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured;

Pursuant to 11 U.S.C. § 101(a)(12), a "'debt' means liability on a claim." In the instant case, the Court finds that the debt for the cost of plugging the well at issue arose as a result of the inaction of the Debtor/Plaintiff in paying annual fees due prior to the filing of the instant Chapter 7 bankruptcy. As such, the debt for plugging the oil well existed at the time of the filing of the bankruptcy, even though it was unmatured and unliquidated. Based upon the Debtor/Plaintiff's failure to pay the 1998 fiscal year fees that were due prior to the filing of the instant bankruptcy, the Court finds that the oil well in question had been effectively abandoned. It was this abandonment, which occurred prepetition, that sparked the administrative actions which led to the eventual plugging of the well, resulting in the debt which is the subject of this adversary proceeding. It is often stated that, in bankruptcy proceedings, exceptions to discharge are to be construed strictly against a creditor and liberally in favor of the debtor. See: In re Zarzynski, 771 F.2d 304 (7th Cir. 1985). Adhering to this principle, the Court must conclude that, under the undisputed

facts in the instant proceeding, the debt in question should be found to be discharged by the Debtor/Plaintiff's bankruptcy proceeding.

ENTERED: March 30, 2001.

/s/ GERALD D. FINES
Chief United States Bankruptcy Judge